

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STEVEN A. MCMILLEN, SR.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:11-CV-704-CEJ
)	
DAVE DORMIRE,)	
)	
Respondent.)	

MEMORANDUM AND ORDER OF TRANSFER

This matter is before the Court upon review of Steven A. McMillen, Sr.'s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has also filed an "Affidavit in Support of Request to Proceed In Forma Pauperis" [Doc. #4], which will be liberally construed as a motion for leave to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a). Upon consideration of petitioner's financial information, the Court finds that he is financially unable to pay any portion of the filing fee. Therefore, the Court will grant petitioner leave to proceed in forma pauperis.

Petitioner is challenging the constitutionality of his 1997 conviction in the Circuit Court of Chariton County, Missouri. The Court's records show that petitioner previously filed a § 2254 petition for a writ of habeas corpus challenging the same conviction. The earlier petition was denied on the merits. See McMillen v. Dormire, No. 4:00-CV-750-CEJ (E.D. Mo.). On June 29, 2007, petitioner filed a second § 2254 habeas petition, which was denied and transferred to the United States Court of Appeals for the Eighth Circuit as petitioner had not obtained an order authorizing a successive petition. See McMillen v. Dormire, No. 4:07-CV-1214-TIA (E.D. Mo.). Title 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive application permitted by this section

is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

There is no indication that the Court of Appeals has certified the instant habeas application as required by § 2244(b)(3)(A). As such, this Court lacks authority to grant petitioner the relief he seeks. Rather than dismiss this action, the Court will transfer the petition to the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631. See In re Sims, 111 F.3d 45, 47 (6th Cir. 1997); Coleman v. United States, 106 F.3d 339 (10th Cir. 1997); Liriano v. United States, 95 F.3d 119, 122-23 (2d Cir. 1996).

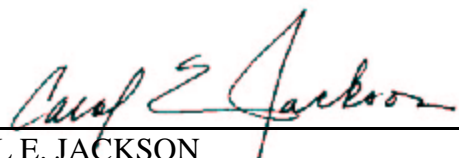
Therefore,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. #4] is **granted**.

IT IS FURTHER ORDERED that no order to show cause shall issue as to respondent, because the instant petition is successive under 28 U.S.C. § 2244(b)(3)(A).

IT IS FURTHER ORDERED that petitioner's application for a writ of habeas corpus is **denied without prejudice**.

IT IS FURTHER ORDERED that the Clerk of Court shall transfer the instant petition to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 12th day of May, 2011.